

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTEO FAGOTTO,

Plaintiff,

- against -

MICROSOFT CORPORATION

Defendant.

Docket No. 1:19-cv-5551

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Matteo Fagotto (“Fagotto” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Microsoft Corporation (“Microsoft” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of copyrighted text of the sea level rising in West Africa, owned and registered by Fagotto, an award-winning journalist. Accordingly, Fagotto seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Fagotto is an award-winning journalist in the business licensing his text to print and online media for a fee having a usual place of business at Via Sandro Botticelli, 22 20133 Milan Italy.

6. Upon information and belief, Microsoft is a foreign business corporation duly organized and existing under the laws of the State of New York, with a place of business at 11 Times Square, New York, New York 10036. Upon information and belief, Microsoft is registered with the New York Department of State Division of Corporation to do business in the State of New York. At all times material hereto, Microsoft has owned and operated a website at the URL: www.MSN.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Text

7. Fagotto wrote text on the sea level rising in West Africa (the “Text”). A true and correct copy of the Text is attached hereto as Exhibit A.

8. Fagotto is the author of the Text and has at all times been the sole owner of all right, title and interest in and to the Text, including the copyright thereto.

9. The Text was registered with United States Copyright Office and was given Copyright Registration Number TX 8-377-093.

B. Defendant’s Infringing Activities

10. Microsoft ran the Text on the Website. See: <https://www.msn.com/es-ve?refurl=%2fes-ve%2fnoticias%2fotras%2fla-rabia-del-oceano%2far-AAklO8E>. Screenshots of the Text on the Website are attached hereto as Exhibit B.

11. Microsoft did not license the Text from Plaintiff for its Website, nor did Microsoft have Plaintiff's permission or consent to publish the Text on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Microsoft infringed Plaintiff's copyright in the Text by reproducing and publicly displaying the Text on the Website. Microsoft is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Text.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Microsoft have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Text, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Microsoft be adjudged to have infringed upon Plaintiff's copyrights in the Text in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Text; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
June 13, 2019

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